IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

Monday, the Second Day of August
Two Thousand and Four

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 4158 of 2004

Between:

1 Smt. A. Mutyabai, W/o. A.S. Rao,
R/o. D.No.8-3-966/22, Nagarjunanagar,

Ameerpet, Hyderabad - 500 073,
2 A. Ashok Kumar, S/o. A.S. Rao.
R/o. D.No.8-3-966/22, Nagarjunanagar,

Ameerpet, Hyderabad - 500 073.

... PETITIONER(S)

AND

1 The Commissioner, Municipal Corporation of Hyderabad,
Near Tank Bund, Hyderabad.
2 M/s. Eureka Estates Pvt. Ltd., G-1, "Eureka Court",

Ameerpet, Hyderabad - 500 073,

rep. by its Managing Director,
K. Tulasi Ram, S/o. K. Musalaiah.

..RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the inaction of the respondent No.1 in not taking any steps in pursuance of notice in its Proc.B.R.S. No.1084/BRS/HO/98, dated 29-6-2000 issued to the respondent No.2 to remove the un-authorized construction of 6th floor in the complex constructed by the respondent No.2 and to consider the application dt.28-8-1998 submitted by the respondent No.2 in Form No. A, and Form No.B under Building Regulation Scheme (B.R.S.) for regularization of the flat Nos. C9, C10, C11, and C12 allotted to the petitioners in the 4th floor of the complex Viz., "Eureka Court", Ameerpet, Hyderabad, as illegal, improper and arbitrary besides being

contrary to the well settled principles of law and consequently to direct the respondent No. 1 to remove the un-authorized construction of 6th floor and to consider the application, dated 28-8-1998 submitted by the respondent No.2 in Form No.A, and Form No.B under Building Regualtion Scheme (B.R.S) for regularization of the flat No.s. C9, C10, C11, and C12 allotted to the petitioners in the 4th floor of the complex Viz.,"Eureka Court", Ameerpet, Hyderabad.

Counsel for the Petitioner : MR.K.SANKARAIAH, Advocate

Counsel for the Respondent No.1 : SMT.G.JYOTHI KIRAN, Standing Counsel for MCH.

Counsel for the Respondent No.2 : Sri Vedula Venkataramana.

The Court made the following :

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O R D E R :

The two petitioners seek a writ of mandamus directing the first respondent-Commissioner, Municipal Corporation of Hyderabad, to take further steps pursuant to the proceedings B.R.S.No.1084/BRS/HO/98, dated 29-6-2000 whereby and whereunder the application of the second respondent for regularization of unauthorized constructions in accordance with G.O.Ms.No.419, Municipal Administration, dated 30-7-1998 was rejected and the Municipal Corporation of Hyderabad ordered for demolition of sixth floor, which was admittedly made unauthorisedly without any building permission under the provisions of Hyderabad Municipal Corporations Act,1955.

In the counter affidavit filed by the Chief City Planner on behalf of the Municipal Corporation of Hyderabad, various allegations made by the petitioners have not been specifically denied. Therefore, it is not necessary to elaborately advert to the pleadings of the petitioners. Be that as it is, the Chief City Planner, in the counter affidavit states that though the application of the second respondent for regularization of unauthorized construction in Eureka Court was rejected on 29-6-2000, but further action for demolition of the sixth floor and other unauthorized constructions could not be made in view of the orders of the Court of the IV Junior Civil Judge, City Civil Court, Hyderabad, made in I.A.No.1538 of 1997 in O.S.No.4739 of 1997.

Heard learned counsel for the petitioners, learned Standing Counsel for Municipal Corporation of Hyderabad and learned counsel for the second respondent. There is no dispute that the second respondent has made unauthorized construction and the application made under G.O.Ms.No.419, dated 30-7-1998 was rejected long back. In that view of the matter, though there is an *inter-se* dispute between the petitioners on one hand and the second respondent on the other, as the first respondent being a statutory authority has to discharge his duty in implementing its own orders. There cannot be any doubt that the petitioners are justified in approaching this Court to compel the first respondent to discharge his statutory duties. While discharging the duty, the first respondent is, however, has to give effect to the Court orders, if any. Therefore, the first respondent was justified. What is surprising is that though the Civil Court passed orders some time in 1997, it appears, no application to vacate the interim order was moved. Therefore, it would be proper to direct the first respondent to move the Civil Court, immediately bringing to the notice of the Civil Court about the orders passed on 29-6-2000 as well as the judgment of this Court in **Advocate General v. State of A.P.** As and when such application is moved, it shall be open to the learned IV Junior Civil Judge, Hyderabad to pass orders in the interlocutory application or dispose of the suit within a period of four weeks from the date of receipt of a copy of this order. As and when the suit is disposed of, the Municipal Corporation of Hyderabad shall take necessary action as per the decision of the B.R.S.Disposal Committee, whose decision was communicated in proceedings B.R.S.No.1084/BRS/HO/98, dated 29-6-2000 immediately. If the application for building regularization made by the petitioners is still pending, it may be considered by the Corporation in accordance with law.

The writ petition, with the above observations and directions, is disposed of. No costs.

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(V.V.S. RAO, J.)

Dt. 02-08-2004.

Msr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner, Municipal Corporation of Hyderabad,

Near Tank Bund, Hyderabad.

2. The IV Junior Civil Judge, City Civil Court, Hyderabad.

3. 2CD copies.

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.4158 of 2004

Dt.02-08-2004.

(Msr)